

Editor's note: Distinguished by Nordic Veneers, Inc., 3 IBLA 86 (Aug. 2, 1971).

OREGON ALDER-MAPLE COMPANY

IBLA 71-34

Decided January 26, 1971

Rules of Practice: Appeals: Dismissal

An appeal to the Secretary of the Interior will be dismissed when the appeal is withdrawn.

Timber Sales and Disposals: Extension of Contracts

A request for extension of timber sale contracts, based on a general repression in the national economy, may be granted where it appears that such action will benefit the public interest.

IBLA 71-34	:	14-11-0008 (14) 404,
	:	406, 410, 411 (Oregon)
OREGON ALDER-MAPLE COMPANY	:	Timber sale contracts
	:	Appeal dismissed in
	:	part. Reversed and
	:	remanded in part

DECISION

Oregon Alder-Maple Company has appealed to the Secretary of the Interior from a decision dated August 10, 1970, wherein the District Manager, Salem District, Bureau of Land Management, denied its applications for extensions of one year on Timber Sale Contracts 14-11-0008 (14) 404, 406, 410, and 411. The decision held that inability to perform because of financial hardships and market conditions cannot be regarded as sufficient cause to merit an extension under Section 9 of the Contracts.

Oregon Alder-Maple has now withdrawn its appeal relating to Contracts 404 and 406, and has modified its requests for extensions to eight months on Contract 411 and six months on Contract 410, so that if the requests are granted, each contract will run to November 7, 1971.

In its statement of reasons appellant contends that its inability to complete the timber sale contracts within the specified term stems from a falling-off of the total economy, a rapidly mounting inflation, a pervading tight money policy, soaring interest rates and a distressing rate of unemployment. It contends that denial of its request for the extensions will cause approximately 150 jobs to disappear from the presently depressed Willamina-Sheridan area in Yamhill County, Oregon. Included in the statement was a description of self-help measures already taken by the appellant and planned for the immediate future in its effort to remain operative, the apparent purpose being to demonstrate appellant's good faith and desperate circumstances.

It is noted in the record that the District Manager, Salem District, recommended granting the extension as originally requested by Oregon Alder-Maple, in line with a practice commonly

followed by other timber management agencies, both Federal and State, in western Oregon. The Oregon State Director, Bureau of Land Management, ruled that the District Manager was required to deny the requests for extension under Section 9 of the Timber Sale Contracts.

According to its terms, Contract 410 authorizes the appellant to remove from public lands in Tillamook County, Oregon, an estimated 5,050 M. board feet of timber for a price of \$ 607,767.00. This contract was entered into July 7, 1969, and is to expire 22 months later on May 7, 1971. Contract 411 authorizes the appellant to remove from public lands in Yamhill County, Oregon, an estimated 1,518 M. board feet of timber for a price of \$ 134,362.95. This contract was entered into July 7, 1969, and is to expire 20 months later on March 7, 1971. The appellant made a \$ 10,000.00 cash deposit on each contract.

The written requests for extension of the timber sale contracts were received prior to the expiration of the time for cutting and removal. 43 CFR 5473.1, 35 F. R. 9787 (formerly 43 CFR 5443.1).

The regulation and Section 9 of the Standard Provisions of the Timber Sale Contract provide in pertinent part:

Extension of Time and Reappraisal. If the Purchaser shows that his delay in cutting and removal was due to causes beyond his control and without his fault or negligence, the Authorized Officer may grant an extension of time, not to exceed one year upon written request of the Purchaser. Market fluctuations are not cause for consideration of contract extensions. . . . 43 CFR 5463.2, 35 F. R. 9787 (formerly 43 CFR 5443.1).

The appellant has not urged that its failure to perform under the Timber Sale Contracts is because of market fluctuations, but because of a nationwide deterioration of the total economy so that the demand for its finished lumber products has declined or disappeared. However, it is well established that a business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract. See Marionneaux v. Smith, 163 S. 206 (La. App. 1935); Western Alfalfa Milling Co. v. Worthington, 31 Wyo. 82, 223 P. 218 (1924). See also Williston, Contracts § 1968 (rev. ed.). Accordingly, the appellant has not shown that the delay in cutting and removing the timber was due to acceptable causes beyond its control.

This does not mean, however, that the failure of the appellant to cite cogent reasons within the context of the exculpatory clause is necessarily determinative of the question.

It is within the discretionary authority of the Department of the Interior, as administrator of the public lands involved, to consider the circumstances of the case with regard to the public interest and the consequences which may reasonably be anticipated.

On August 19, 1970, the Assistant Secretary of Commerce for Economic Development wrote to the Secretary of the Interior to inform him of the high prevailing unemployment rate in Yamhill County and to advise that if appellant's mill closed with the resultant loss of approximately 150 jobs, Yamhill County's economic situation could become critical. The Assistant Secretary requested that these aspects be considered in deciding the appeal.

We believe that the public interest will be benefited by the granting of appellant's request. Moreover, the lease terms in Section 9 provide that the timber shall be reappraised if the extension is granted and that the total purchase price shall be adjusted to reflect the new appraisal, provided the reappraised total price shall be not less than the total purchase price in effect during the original time for cutting and removal. The authorized officer also may require payment of the reappraised total purchase price in advance as a condition of granting the extension. It thus appears that the public interest will suffer no corresponding detriment if the requested extensions of time for cutting and removal of the timber are granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the appeal is dismissed as to Contracts 404 and 406, and the decision below is reversed as to Contracts 410 and 411. The case files are remanded to the Bureau of Land Management for further appropriate action consistent herewith.

Newton Frishberg, Chairman

I concur: I concur:

Edward W. Stuebing, Member

Francis E. Mayhue, Member

